HUSBAND AND WIFE—CAPACITY TO SUE ONE ANOTHER.—A wife brought an action against her husband for assault under a statute designed to place the wife on an equal legal status with the husband, but containing no express provision enabling one to sue the other. *Held,* the action will lie. *Brown* v. *Brown* (Conn.), 89 Atl. 889.

By the fiction of the complete unity of husband and wife, neither could sue the other at common law. PECK, DOMESTIC RELATIONS, 120. Modern statutes, similar in their provisions to that in the principal case, have given the married woman the legal status of *femme sole* in her relation to third persons. But as between husband and wife the exact scope of these statutes is not settled. It has been held that the wife may sue her husband in ejectment to recover her separate property. *Crater* v. *Crater,* 118 Ind. 521, 21 N. E. 290; *Wood* v. *Wood,* 18 Hun (N. Y.) 350. See also, 3 Am. & Eng. Ann. Cas. 145 (note). A wife has been allowed to sue a partnership of which her husband was a member. *Benson* v. *Morgan,* 50 Mich. 77, 14 N. W. 705. In some jurisdictions a wife may acquire title by adverse possession against her husband. *Union Oil Co.* v. *Stewart* (Cal.), 110 Pac. 313; *McPherson* v. *McPherson,* 75 Neb. 830, 106 N. W. 991.

As regards personal torts the weight of authority allows neither consort to sue the other in the absence of express statutory provision. *Thompson* v. *Thompson,* 218 U. S. 611; *Peters* v. *Peters,* 42 Iowa 182; *Abbe* v. *Abbe,* 22 App. Div. 483, 48 N. Y. Supp. 25.

On principle it would seem, that while these statutes have the effect of completely emancipating the wife, they do not effect the settled public policy on which the doctrine is based, that the peace and happiness of the family relation is endangered by allowing suits by one against the other for personal torts. Again, these statutes being in derogation of the common law, should receive a strict construction.

INSURANCE—IMPLIED WAIVER OF FORFEITURE.—The insured having disclosed the circumstances of the fire and submitted proofs of loss, the insurer declined to pay on the ground of breach of condition as to keeping gasoline on the premises, but after the institution of the action, defended on other grounds. *Held,* the insurer has waived all grounds of forfeiture except the specific ground named in the declination to pay. *Ward* v. *Queen City Fire Ins. Co.* (Ore.), 138 Pac. 1067. See NOTES, p. 628.

INTOXICATING LIQUORS—ILLEGAL SALE—WHAT CONSTITUTES A SALE.—A statute provided a penalty for the sale of liquor. The defendant lent a friend liquor to be returned in kind. *Held,* this is a sale within the statute. *Howard* v. *State* (Tex.), 163 S. W. 429.

This decision is in accord wih a long line of Texas cases on the same point. *Tombeaugh* v. *State,* 50 Tex. Crim. App. 286, 98 S. W. 1054. Under similar statutes lending liquor has been held to be a sale. *Com.* v. *Abrams,* 150 Mass. 393, 23 N. E. 53. Under a statute using the terms "sell, barter, or exchange" a loan has been held to be a sale. *Clark* v. *State,* 167 Ala. 101, 52 So. 893.

In otherjurisdictions it has been held that a *bona fide* loan lacks the

elements of a sale. *Gillam* v. *State,* 47 Ark. 555, 2 S. W. 185; *Hubby* v. *State,* 111 Ga. 842, 36 S. E. 301.

Statutes as clearly penal as that involved in the principal case are to be construed strictly. Merely because an act contravenes the policy of the statute it is not within the statute unless it comes conclusively within its wording. *Seigel* v. *People,* 106 Ill. 94; *Coker* v. *State,* 91 Ala. 94. 8 So. 875. The words exchange, barter and loan have a different legal import from the word sale. *Read* v. *Hutchinson,* 3 Camp. 352; *Harrison* v. *Luke,* 14 Mees & W. 139; *Williamson* v. *Berry,* 8 How. 540; *Mitchell* v. *Gile,* 12 N. H. 390. It would seem, therefore, that the word sale in such statutes cannot be construed to mean something different from its ordinary legal import. *Skinner* v. *State,* 97 Ga. 690, 25 S. E. 364.

MORTGAGES—NEGOTIABILITY WHEN SECURING NEGOTIABLE PAPER.—An action to set aside a conveyance of real estate on the ground of fraud was brought against the grantee and a mortgagee who had taken the encumbrance with notice of the fraud. The assignee of the mortgage and a negotiable note which it secured intervened. *Held,* the intervener, by taking the note and mortgage in good faith before maturity and for valuable consideration, took the mortgage as well as the note free from antecedent equities. *Robertson* v. *United States Live Stock Co.* (Iowa), 145 N. W. 535. See NOTES, p. 622.

NEGLIGENCE—OF BAILEE AS IMPUTABLE TO THE BAILOR.—The concurrent negligence of the bailee of a horse and the defendant resulted in the death of the horse. The bailor attempted to recover from the defendant. *Held,* the negligence of the bailee is not imputable to the bailor, and he may recover. *Spelman* v. *Delano* (Mo.), 163 S. W. 300.

There is a conflict of authority as to whether the contributory negligence of the bailee is imputable to the bailor in an action by the latter against a third party for negligent injury to the subject of the bailment. A third party, injured by the bailee's negligent use of the subject of the bailment cannot recover from the bailor. *Herlihy* v. *Smith,* 116 Mass. 265; *Bard* v. *Yohn,* 26 Pa. St. 482. Working from that basis, the court in the principal case drew the conclusion that the bailee's negligence should not be imputed to the bailor when the latter attempted to recover. It is certain that this decision is in accordance with the weight of modern authority. *New Jersey Electric Ry. Co.* v. *New York, etc., R. R. Co.,* 61 N. J. L. 287, 41 Atl. 1116, 43 L. R. A. 849; *Sea Ins. Co.* v. *Vicksburg, etc., Ry. Co.,* 86 C. C. A. 544, 159 Fed. 676, 17 L. R. A. (N. S.) 925; *Gibson* v. *Bessemer, etc., R. R. Co.,* 226 Pa. St. 198, 75 Atl. 194, 27 L. R. A. (N. S.) 689. *Contra, Texas, etc., Ry., Co.* v. *Tankersley,* 63 Tex. 57; *Illinois Central R. R. Co.* v. *Sims,* 77 Miss. 325, 27 So. 527, 49 L. R. A. 322. If the bailee, when negligent was engaged in a joint enterprise with the bailor, his negligence should be imputed. *Puterbalgh* v. *Reasor,* 9 Ohio St. 484. These cases involving the question considered in the principal case should be distinguished from the cases where the bailee is also the agent of the bailor as a carrier of goods, where the latter's negligence is very properly imputed to the bailor. This arises from the privity of con-